

Page 1 of 7

FILED	LODGED
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APR 17 2009	
CLERK U.S. DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	M DEPUTY

1 Beatrice Miranda
2 Coconino County Detention Facility
3 951 E. Sawmill Rd.
4 Flagstaff, AZ 86001

5
6 IN THE UNITED STATES DISTRICT COURT
7 DISTRICT OF ARIZONA

8 Beatrice Miranda,

9 Petitioner,

10 v.

11 Tracy Nielsen, Interim Chief, Pascua
12 Yaqui Tribe Department of Public
13 Safety,

14 Kurt Braatz, Commander, Detention,
15 Coconino County Detention Facility,
16 and

17 Vincent Anchando, Assistant
18 Correctional Program Specialist,
19 Bureau of Indian Affairs
20 Office of Justice Services - Division of
21 Corrections,

22 Respondents.

23 CV-09-8065-PCT-PGR-ECV

24 REQUEST FOR
25 APPOINTMENT OF COUNSEL
26 PURSUANT TO 18 U.S.C. § 3006A

27 Petitioner Beatrice Miranda is an enrolled member of the Pascua Yaqui
28 Tribe ("the Tribe"). Ms. Miranda is currently serving a sentence totaling 910 days
in custody imposed by the Pascua Yaqui Tribal Court. Because she is being held
in custody in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(7), Ms.
Miranda is filing herewith a Petition for Writ of Habeas Corpus pursuant to 25
U.S.C. § 1303 and 28 U.S.C. § 2241. As the Financial Affidavit attached hereto as
Exhibit A shows, Ms. Miranda cannot afford to hire private counsel to represent
her in connection with the Petition. Ms. Miranda respectfully requests that this
Court appoint the Office of the Federal Public Defender for the District of Arizona
to represent her in connection with the Petition pursuant to the Criminal Justice

1 Act, 18 U.S.C. § 3006A (the “CJA”) and the CJA Plan for the District of Arizona.
2 The Declaration of Assistant Federal Public Defender Daniel L. Kaplan attached
3 hereto as Exhibit B demonstrates that Mr. Kaplan has familiarized himself with the
4 pertinent facts and legal issues and stands ready to represent Ms. Miranda in
5 connection with the Petition.
6

7 Ms. Miranda notes that Mr. Kaplan assisted her in the preparation of this
8 Request, as well as the Petition for Writ of Habeas Corpus filed herewith, and that
9 these documents do not reflect upon her ability to represent herself effectively.
10

Argument

11 **The “Interests of Justice” Require that CJA Counsel be Appointed 12 to Assist Ms. Miranda with Her Petition for Writ of Habeas Corpus.**

13 **A. Ms. Miranda is Eligible for Appointed Counsel Under the 14 CJA, the CJA Plan for the District of Arizona, and Applicable Caselaw.**

15 18 U.S.C. § 3006A(a)(2)(B) specifies that a United States Magistrate Judge
16 may appoint government-supplied counsel to represent a financially eligible
17 individual seeking relief under 28 U.S.C. § 2241 upon the judge’s determination
18 that “the interests of justice so require.” The CJA Plan for the District of Arizona
19 in turn provides that “[r]epresentation must be provided for all eligible persons
20 under . . . 18 U.S.C. § 3006A.” CJA Plan for the District of Arizona Part IV.A.1
21 (*adopted by General Order 07-08*). In deciding whether to appoint counsel in a
22 habeas proceeding, the Court generally should “evaluate the likelihood of success
23 on the merits as well as the ability of the petitioner to articulate his claims pro se
24 in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718
25 F.2d 952, 954 (9th Cir. 1983).
26

27 In the instant case, the requisites for the appointment of CJA counsel are
28 present. Ms. Miranda is “financially eligible,” as shown by the Financial Affidavit

attached hereto as Exhibit A. Ms. Miranda is seeking relief under 28 U.S.C. § 2241, as the Petition for Writ of Habeas Corpus filed herewith demonstrates. Section 2241 is applicable, because Ms. Miranda is “in custody in violation of the Constitution or laws or treaties of the United States” (*id.* § 2241(c)(3)) – specifically, she is in custody in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(7). Ms. Miranda’s right to pursue habeas corpus relief is further confirmed by 25 U.S.C. § 1303, which provides that “[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.” Finally, the “interests of justice” require that counsel be appointed, because Ms. Miranda’s claim is likely to succeed on the merits – provided that she has the assistance of counsel.

B. Ms. Miranda’s Claim is Likely to Succeed Because Her Two-and-a-Half Year Sentence Far Exceeds the Indian Civil Rights Act’s One-Year Cap.

The claim raised in Ms. Miranda's Petition for Writ of Habeas Corpus is substantial and likely to succeed. Ms. Miranda hereby incorporates her Petition by this reference, and provides the following summary of the factual and legal basis for the claim raised in the Petition.

The portion of the Indian Civil Rights Act codified at 25 U.S.C. § 1302(7) prohibits any Indian tribe exercising powers of self-government from “impos[ing] for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year.” In a recent case, the United States District Court for the District of Minnesota held that this language bars Indian tribes from sentencing individuals to more than one year of imprisonment in connection with any “single criminal transaction.” *Spears v. Red Lake Band of Chippewa Indians*, 363 F. Supp. 2d 1176 (D. Minn. 2005). After thoroughly surveying the history and purpose of the Indian Civil Rights Act, the court concluded that Congress’s

1 intention was to create a “balanced and logical regime” whereby “Indians accused
2 of minor crimes faced minor penalties in tribal court where some constitutional
3 rights were withheld,” whereas “Indians accused of serious crimes faced serious
4 penalties in federal court where all constitutional rights were available.” *Id.* at
5 1180. If a contrary interpretation were adopted, the court stressed, “tribal court
6 defendants would be routinely exposed to serious sentences for minor crimes
7 without guaranteeing them all their basic constitutional rights.” *Id.*

8
9 Ms. Miranda’s prosecution and sentencing powerfully demonstrate the truth
10 of the *Spears* court’s observation. Ms. Miranda is serving a sentence of two and a
11 half years in connection a “single criminal transaction” involving an encounter
12 between her and two female tribe members on the Pascua Yaqui reservation.
13 Although the Tribe charged her with eight separate criminal counts, the narrative
14 accompanying each count identified the time of the offense as “approximately
15 10:56 p.m.” on January 25, 2009, and identified the place of each offense as a one-
16 or two-block area of the Pascua Yaqui reservation. All of the charges related to a
17 brief encounter in which no one was hurt, but Ms. Miranda allegedly yelled
18 profanities at two female tribe members and menaced them with a knife. Neither
19 the Indian Civil Rights Act nor the constitution and laws of the Pascua Yaqui
20 Tribe guaranteed Ms. Miranda government-supplied counsel, and she was
21 unrepresented through her trial and sentencing. Through the trial and sentencing,
22 Ms. Miranda made no objections, presented no evidence or argument, and raised
23 no defenses. As the *Spears* court observed, Congress intended for the Indian Civil
24 Rights Act to provide persons charged in tribal court with meaningful protections
25 paralleling those provided in the Bill of Rights, and it was never Congress’s
26 intention that individuals would be sentenced to as much as two and a half years
27 after having been tried and convicted without counsel.

Finally, Ms. Miranda is not able to effectively represent herself. Ms. Miranda has only a high-school education, and no legal training. This document was prepared with the assistance of Assistant Federal Public Defender Daniel L. Kaplan, whose Declaration is attached hereto as Exhibit B, and does not reflect upon Ms. Miranda's ability to represent herself effectively. Instead, Ms. Miranda's ability to represent herself effectively is illustrated by her self-representation in her trial and sentencing in the tribal court, in the course of which she filed no pleadings, made no arguments, examined no witnesses, and raised no defenses. Moreover, the issue raised in her Petition is complex, involving a difficult question regarding the interpretation of ambiguous language in a federal statute and the examination of the statute's history and purposes. The issue is also important, broadly implicating the sentencing power of Indian tribal governments across the country. Because the existing caselaw on the issue is quite limited, this Court's decision will play a crucial role in the development of this important legal issue, and will likely be of assistance to the Ninth Circuit and perhaps the Supreme Court in future appeals. A thorough development of the arguments relating to this important issue through adversary presentations by trained counsel will assist the Court in reaching an informed decision.

Conclusion

22 In summary, the claim raised in Ms. Miranda's Petition for Writ of Habeas
23 Corpus is important, complex, and likely to succeed on the merits, but only with
24 the application of legal skills that Ms. Miranda does not possess. For these
25 reasons, and pursuant to the CJA, the CJA Plan for the District of Arizona, and
26 applicable caselaw, Ms. Miranda respectfully requests that the Court appoint the
27

1 Office of the Federal Public Defender for the District of Arizona to represent her
2 in connection with her Petition for Writ of Habeas Corpus.
3
4

5 Respectfully submitted on: _____
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8 *Beatrice Miranda* 4/16/09
9 BEATRICE MIRANDA
Coconino County Detention Facility
951 E. Sawmill Rd.
Flagstaff, AZ 86001
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FINANCIAL AFFIDAVIT																							
IN UNITED STATES <input type="checkbox"/> MAGISTRATE <input type="checkbox"/> DISTRICT <input type="checkbox"/> APPEALS COURT or <input type="checkbox"/> OTHER PANEL (Specify below)																							
IN THE CASE OF _____																							
V.S. _____		FOR _____		LOCATION NUMBER _____																			
PERSON REPRESENTED (Show your full name) _____																							
CHARGE/OFFENSE (describe if applicable & check box →) <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor																							
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EMPLOY- MENT	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed																						
	Name and address of employer: _____																						
	IF YES, how much do you earn per month? \$ _____																						
	IF NO, give month and year of last employment _____ How much did you earn per month? \$ _____																						
ASSETS	If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>N/A</i>																						
	IF YES, how much does your Spouse earn per month? \$ _____																						
	If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____																						
	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																						
PROP- ERTY	RECEIVED IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES \$ _____																						
	RECEIVED IF YES, GIVE THE VALUE AND \$ DESCRIBE IT _____																						
	CASH Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, state total amount \$ _____																						
	PROPERTY Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																						
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List persons you actually support and your relationship to them <i>Nikki Miranda mother</i> <i>Daisy Miranda mother</i> <i>Jeremy Miranda mother</i>																							
DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)																							
APARTMENT OR HOME: _____																							
Creditors _____																							
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I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) <i>4/2/09</i>																							
SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED) <i>Beatrice Miranda</i>																							